



## ROBERT W. WIRCH

STATE SENATOR TWENTY-SECOND DISTRICT

March 10<sup>th</sup> 2010

### **Senate Bill 540: Political Disbursements by Corporations**

Thank you Mr. Chairman for holding a hearing on Senate Bill 540.

In response to the Supreme Court's decision in the Citizens United case, I am introducing legislation to ensure that a majority of corporate shareholders approve of disbursements in campaigns for state or local office.

My idea for this legislation came from a footnote of Justice Kennedy that reads, "There is, furthermore, little evidence of abuse that cannot be corrected by shareholders through the procedures of corporate democracy." This bill is a push for corporate democracy.

This legislation will require a corporation to get the approval of the voting shares or members who are entitled to vote to elect the board of directors before political disbursements are made. This provision of the bill will bring accountability to corporations that now have unlimited spending to influence elections.

Under this bill, a corporation must file proof of their shareholder's approval with its registration statement that is satisfactory to the Government Accountability Board. Private corporations must submit a statement with their registration indicating they have no shareholders.

This bill also provides disclosure by imposing registration and reporting requirements on any individual or organization that makes a communication with reference to a political party, candidate, or office to be filled within 60 days of an election.

If a corporation makes a political disbursement without the approval of their shareholders, this bill will penalize the individual responsible for authorizing the disbursement. The civil penalty for failure to file appropriate registration is \$500, and an intentional violation may result in a fine up to \$1000 or imprisonment up to 6 months, or both.

I have offered two amendments for this bill. The first amendment is a small technical language change. The second amendment removes language that would allow corporate disbursements to be made and now states that the bill's regulations for political disbursements are only effective if a court finds that corporations cannot be prohibited from making disbursements. If a court later finds that corporations can be prohibited from making disbursements, the GAB will publish this in the Wisconsin Administrative Register, and the regulations for disbursements in this bill will be void.

I strongly believe this is common sense legislation that will give shareholders a voice in how their money is spent in Wisconsin elections. This bill will hold corporations accountable for their political advertisements and disbursements, and pushes for corporate democracy.

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TESTIMONY OF PEGGY A. LAUTENSCHLAGER  
BEFORE THE  
COMMITTEE ON LABOR, ELECTIONS, AND URBAN AFFAIRS  
Wednesday, March 10, 2010  
Madison, Wisconsin

*The following statement regarding 2009 Senate Bill 540 is a written summary of remarks made today at a hearing before the Wisconsin Senate Committee on Labor, Elections, and Urban Affairs. The testimony before the Committee was given without notes or this text. This text is prepared at the request of the Committee to summarize that testimony.*

The majority opinion in the case of *Citizens United v. F.E.C.*, Case no. 08-205 (2010), gives rise to significantly expanded rights of political speech by corporations in elections throughout United States. Justice Kennedy, writing for the majority, equated these rights to those held by individuals, and thus affords corporations the right to speak politically and use corporate dollars therefor. The majority opinion, however, left the door open to issues of disclosure. As well, issues arise involving shareholders' and investors' rights in controlling corporate speech and the rights of foreign corporations and foreign shareholders and investors to speak through the corporate veil.

The Court's majority contemplates some regulation of corporate speech, recognizing that such speech might not go completely unfettered. Accordingly, advocates of campaign finance reform and transparency in the process are currently crafting legislation at both the state and federal levels to address the rights of shareholders and investors, the disclosure of shareholder and investor identities, the speech of foreign corporations, and the speech of domestic corporations owned in whole or part by foreign shareholders and investors.

Senate Bill 540 essentially requires corporations wishing to make disbursements to influence an election for state or local office to file a registration statement with the Government Accountability Board (GAB). Further, the Bill requires the corporations file with the GAB both a document showing that the majority of shareholders support the speech and a report of expenditures made. Thus, the bill gives shareholders some rights in the approval of corporate speech, and requires some disclosure about the costs of that speech and the identity of the speakers.

These basic requirements, I believe, serve the interests of the people of Wisconsin. They assure stockholders the right to approve speech made with their investments and give the public at large information about that speech, its costs, and the speakers. They create requirements of approval and transparency consistent with those for individuals and organizations that already enjoy rights of political speech under Wisconsin and federal law.

Left unanswered in the proposed legislation are numerous related issues that might well be addressed by amendment to Senate Bill 540 or in future legislation. For

example: If a minority of shareholders or investors opposes certain corporate speech, how are their rights preserved? Might they opt to receive a "rebate" for the costs of that speech, as is done with labor unions and mandatory professional organizations like the Wisconsin Bar Association? Is the "option" to sell stock shares or terminate other ownership rights in corporations a sufficient remedy for the shareholder or investor who disagrees with a corporation's political speech? How are the rights of individuals participating in various collective funds, such as private equity holdings, retirement funds, and other mutual funds, protected from unwanted political speech by the corporations in which their funds have investments? May their funds be used to further political speech of the corporation despite their opposition to the speech? How will the shareholders and investors in these funds be identified for purposes of disclosure? Does the fiduciary duty of a corporation to its shareholders or a mutual fund to its investors impact its political speech? If shareholders or investors believe a corporation's political speech is not in their best financial interest, what, if anything is their remedy? May foreign shareholders and investors or foreign corporations subvert existing prohibitions on their political speech in U.S. elections by speaking as or through corporations?

These and other issues present a number of complex challenges in addressing the issues left unresolved by *Citizens United*. Clearly, there is no easy solution in the legislative context to address both the legal and political repercussions that arise therefrom. Nonetheless, it is my hope that the Wisconsin Legislature will use Senate Bill 540 as the solid starting point to provide for the necessary framework to insure that the impact of *Citizens United* will be consistent with the expectations of voluntariness and transparency for political speech in Wisconsin elections. Accordingly, I would ask that you support this needed legislation.

Thank you.